

title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2308 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 908 of this title as this section and substituted “2302 or 2307” for “902 or 907”.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator”.

EFFECTIVE DATE

Section effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as an Effective Date of 1976 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 113 of this title.

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

Sec.	
2400.	Establishment of National Cemetery System; composition of such system; appointment of director.
2401.	Advisory Committee on Cemeteries and Memorials.
2402.	Persons eligible for interment in national cemeteries.
2403.	Memorial areas.
2404.	Administration.
2405.	Disposition of inactive cemeteries.
2406.	Acquisition of lands.
2407.	Authority to accept and maintain suitable memorials.
2408.	Aid to States for establishment, expansion, and improvement of veterans' cemeteries.
2409.	Memorial areas in Arlington National Cemetery.
2410.	Burial of cremated remains in Arlington National Cemetery.
2411.	Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal or State capital crimes.

AMENDMENTS

1997—Pub. L. 105-116, §1(b), Nov. 21, 1997, 111 Stat. 2382, added item 2411.

1991—Pub. L. 102-83, §5(b)(1), Aug. 6, 1991, 105 Stat. 406, renumbered items 1000 to 1010 as 2400 to 2410, respectively.

1989—Pub. L. 101-237, title V, §502(b), Dec. 18, 1989, 103 Stat. 2093, added item 1010.

1986—Pub. L. 99-576, title IV, §413(b), Oct. 28, 1986, 100 Stat. 3284, added item 1009.

1978—Pub. L. 95-476, title II, §202(b)(2), Oct. 18, 1978, 92 Stat. 1505, added item 1008.

§ 2400. Establishment of National Cemetery System; composition of such system; appointment of director

(a) There shall be within the Department a National Cemetery System for the interment of deceased servicemembers and veterans. Such system shall be headed by the Director of the National Cemetery System, who shall perform such functions as may be assigned by the Secretary.

(b) The National Cemetery System shall consist of—

(1) national cemeteries transferred from the Department of the Army to the Veterans' Administration by the National Cemeteries Act of 1973;

(2) cemeteries under the jurisdiction of the Veterans' Administration on the date of enactment of this chapter; and

(3) any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, or later acquired or developed by the Secretary.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 75, §1000; amended Pub. L. 99-576, title VII, §701(52), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 100-527, §13(i), Oct. 25, 1988, 102 Stat. 2644; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2400 and amended Pub. L. 102-83, §§4(a)(3), (4), 5(a), Aug. 6, 1991, 105 Stat. 404, 406.)

REFERENCES IN TEXT

The National Cemeteries Act of 1973, referred to in subsec. (b)(1), (3), is Pub. L. 93-43, June 18, 1973, 87 Stat. 75, as amended, which is classified principally to this chapter (§2400 et seq.). For complete classification of this Act to the Code, see section 1 of Pub. L. 93-43 set out as a Short Title of 1973 Amendment note under section 101 of this title and Tables.

For national cemeteries transferred from the Department of the Army to the Veterans' Administration by the National Cemeteries Act of 1973, and any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, referred to in subsec. (b)(1), (3), see Transfer of Functions note set out under section 2404 of this title.

The date of enactment of this chapter, referred to in subsec. (b)(2), is the date of enactment of Pub. L. 93-43, which was approved June 18, 1973.

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 1000 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

1989—Subsec. (b)(3). Pub. L. 101-237 substituted “Secretary” for “Administrator”.

1988—Subsec. (a). Pub. L. 100-527 substituted “Such system shall be headed by the Director of the National Cemetery System, who shall perform such functions as may be assigned by the Secretary” for “The Administrator may appoint a Director, National Cemetery System, who shall perform such functions as may be assigned by the Administrator”.

1986—Subsec. (a). Pub. L. 99-576 substituted “servicemembers” for “servicemen” and “The Administrator” for “To assist him in carrying out his responsibilities in administering the cemeteries within the System, the Administrator”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of this title.

EFFECTIVE DATE

Section 10(a) of Pub. L. 93-43 provided that: “The first section [set out as a Short Title of 1973 Amendment note under section 101 of this title] and sections 2 [enacting this chapter and amending section 5316 of Title 5, Government Organization and Employees], 3 [set out as a note under section 2404 of this title], 4 [enacting section 218 and repealing section 625 of this title], and 8 [amending section 3505 [now 6105] of this title] of this Act shall take effect on the date of enactment of this Act [June 18, 1973].”

SHORT TITLE

For short title of Pub. L. 93-43, June 18, 1973, 87 Stat. 75, which enacted this chapter, as the “National Ceme-

teries Act of 1973", see section 1 of Pub. L. 93-43 set out as a Short Title of 1973 Amendment note under section 101 of this title.

REPORTS ON NATIONAL CEMETERY SYSTEM

Section 412 of Pub. L. 99-576 directed Administrator of Veterans' Affairs to submit to Committees on Veterans' Affairs of Senate and House of Representatives a report on National Cemetery System established by this section not later than 90 days after Oct. 28, 1986, and a second such report not later than 60 months after such date.

AUTHORITY TO ESTABLISH NATIONAL CEMETERIES

Section 414 of Pub. L. 99-576 provided that:

"(a) **AUTHORITY.**—The authority of the Administrator of Veterans' Affairs under chapter 24 of title 38, United States Code, to develop and acquire cemeteries as part of the National Cemetery System includes, but is not limited to, the authority to establish additional national cemeteries to serve the needs of veterans and their families in—

- "(1) San Francisco, California;
- "(2) Chicago, Illinois;
- "(3) Cleveland, Ohio;
- "(4) Pittsburgh, Pennsylvania;
- "(5) Dallas/Fort Worth, Texas;
- "(6) Miami, Florida;
- "(7) Seattle, Washington;
- "(8) Atlanta, Georgia;
- "(9) Phoenix/Tucson, Arizona;
- "(10) Birmingham, Alabama; and
- "(11) any other State in which a national cemetery is not available for the burial of veterans.

"(b) **LAND ACQUISITION.**—The Administrator may acquire land necessary for a cemetery authorized by subsection (a) of this section by donation, purchase, condemnation, exchange of lands in the United States public domain, or otherwise."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 307 of this title.

§ 2401. Advisory Committee on Cemeteries and Memorials

There shall be appointed by the Secretary an Advisory Committee on Cemeteries and Memorials. The Secretary shall advise and consult with the Committee from time to time with respect to the administration of the cemeteries for which the Secretary is responsible, and with respect to the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee shall make periodic reports and recommendations to the Secretary and to Congress.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 75, §1001; amended Pub. L. 99-576, title VII, §701(53), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2401, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1001 of this title as this section.

1989—Pub. L. 101-237 substituted "Secretary" for "Administrator" wherever appearing.

1986—Pub. L. 99-576 substituted "the Administrator" for "he" before "is responsible".

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment,

unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2402. Persons eligible for interment in national cemeteries

Under such regulations as the Secretary may prescribe and subject to the provisions of section 6105 of this title, the remains of the following persons may be buried in any open national cemetery in the National Cemetery System:

(1) Any veteran (which for the purposes of this chapter includes a person who died in the active military, naval, or air service).

(2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(4) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably.

(5) The spouse, surviving spouse (which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce), minor child (which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

(6) Such other persons or classes of persons as may be designated by the Secretary.

(7) Any person who at the time of death was entitled to retired pay under chapter 67¹ of title

¹ See References in Text note below.

10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 75, §1002; amended Pub. L. 99-576, title VII, §701(54), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102-40, title IV, §402(d)(1), May 7, 1991, 105 Stat. 239; renumbered §2402, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-240, §1, May 4, 1994, 108 Stat. 609; Pub. L. 103-446, title VIII, §§801, 802, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 104-275, title II, §211, Oct. 9, 1996, 110 Stat. 3330.)

REFERENCES IN TEXT

Chapter 67 of title 10, referred to in par. (7), was transferred to part II of subtitle E of Title 10, Armed Forces, renumbered as chapter 1223, and amended generally by Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103-337.

AMENDMENTS

1996—Par. (5). Pub. L. 104-275 inserted “(which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution)” after “minor child”.

1994—Par. (5). Pub. L. 103-446 inserted “spouse,” after “The” and “(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)” after “surviving spouse”.

Pub. L. 103-240, §1(b), inserted “and paragraph (7)” after “paragraphs (1) through (4)”.

Par. (7). Pub. L. 103-240, §1(a), added par. (7).

1991—Pub. L. 102-83 renumbered section 1002 of this title as this section.

Pub. L. 102-40 substituted “6105” for “3505” in introductory provisions.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing.

1986—Par. (2), (3). Pub. L. 99-576, §701(54)(A), substituted “while such member” for “while he” wherever appearing.

Par. (5). Pub. L. 99-576, §701(54)(B), struck out “wife, husband,” before “surviving spouse”.

ELIGIBILITY OF FORMER PRISONERS OF WAR FOR BURIAL IN ARLINGTON NATIONAL CEMETERY

Pub. L. 103-160, div. A, title XI, §1176, Nov. 30, 1993, 107 Stat. 1768, provided that:

“(a) ELIGIBILITY FOR BURIAL.—Former prisoners of war described in subsection (b) are eligible for burial in Arlington National Cemetery, Arlington, Virginia.

“(b) ELIGIBLE FORMER POWs.—A former prisoner of war referred to in subsection (a) is a former prisoner of war—

“(1) who dies on or after the date of the enactment of this Act [Nov. 30, 1993]; and

“(2) who, while a prisoner of war, served honorably in the active military, naval, or air service, as determined under regulations prescribed by the Secretary of the military department concerned.

“(c) SAVINGS PROVISION.—This section may not be construed to make ineligible for burial in Arlington National Cemetery a former prisoner of war who is eligible to be buried in that cemetery under another provision of law.

“(d) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of the Army. Those regulations may prescribe a minimum period of internment as a prisoner of war for purposes of eligibility under this section for burial in Arlington National Cemetery.

“(e) DEFINITIONS.—For purposes of this section:

“(1) The term ‘former prisoner of war’ has the meaning given such term in section 101(32) of title 38, United States Code.

“(2) The term ‘active military, naval, or air service’ has the meaning given such term in section 101(24) of such title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2301, 2306 of this title.

§ 2403. Memorial areas

(a) The Secretary shall set aside, when available, suitable areas in national cemeteries to honor the memory of members of the Armed Forces and veterans—

(1) who are missing in action;

(2) whose remains have not been recovered or identified;

(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) whose remains were donated to science; or

(5) whose remains were cremated and the ashes scattered without interment of any portion of the ashes.

(b) Under regulations prescribed by the Secretary, appropriate memorials or markers shall be erected to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section.

(c) All national and other veterans' cemeteries in the National Cemetery System created by this chapter shall be considered national shrines as a tribute to our gallant dead and, notwithstanding the provisions of any other law, the Secretary is hereby authorized to permit appropriate officials to fly the flag of the United States of America at such cemeteries twenty-four hours each day.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 76, §1003; amended Pub. L. 97-66, title VI, §603(b), Oct. 17, 1981, 95 Stat. 1034; Pub. L. 97-295, §4(34), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2403, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

REFERENCES IN TEXT

For composition of National Cemetery System created by this chapter, referred to in subsec. (c), see section 2400(b) of this title.

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1003 of this title as this section.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing.

1982—Subsec. (c). Pub. L. 97-295 substituted “chapter” for “Act” after “created by this”.

1981—Subsec. (a). Pub. L. 97-66 substituted provisions relating to members of the Armed Forces and veterans, for provisions that related only to members of the Armed Forces, struck out provisions limiting the subsection to persons who died or were killed while serving in the Armed Forces, and inserted provisions relating to persons whose remains have not been recovered, whose remains were donated to science, or whose remains were cremated and the ashes scattered without interment of any portion of the ashes.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-66 applicable with respect to veterans dying before, on, or after Oct. 17, 1981, see

section 701(b)(6) of Pub. L. 97-66, set out as a note under section 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2306, 2411 of this title.

§ 2404. Administration

(a) The Secretary is authorized to make all rules and regulations which are necessary or appropriate to carry out the provisions of this chapter, and may designate those cemeteries which are considered to be national cemeteries.

(b) In conjunction with the development and administration of cemeteries for which the Secretary is responsible, the Secretary shall provide all necessary facilities including, as necessary, superintendents' lodges, chapels, crypts, mausoleums, and columbaria.

(c)(1) Subject to paragraph (2), each grave in a national cemetery shall be marked with an appropriate marker. Such marker shall bear the name of the person buried, the number of the grave, and such other information as the Secretary shall by regulation prescribe.

(2) The grave markers referred to in paragraph (1) shall be upright for interments that occur on or after January 1, 1987, except that—

(A) in the case of any cemetery scheduled to be closed by September 30, 1991, as indicated in the documents submitted by the Administrator of Veterans' Affairs to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget for fiscal year 1987, the Secretary may provide for flat grave markers;

(B) in the case of any cemetery with a section which has flat markers on October 28, 1986, the Secretary may continue to provide for flat grave markers in such section;

(C) in the case of any cemetery located on the grounds of or adjacent to a Department health-care facility, the Secretary may provide for flat grave markers; and

(D) in the case of grave sites of cremated remains that are interred in the ground, the Secretary may provide for flat grave markers.

(d) There shall be kept in each national cemetery, and at the main office of the Department, a register of burials in each cemetery setting forth the name of each person buried in the cemetery, the number of the grave in which the veteran is buried, and such other information as the Secretary by regulation may prescribe.

(e) In carrying out the Secretary's responsibilities under this chapter, the Secretary may contract with responsible persons, firms, or corporations for the care and maintenance of such cemeteries under the Secretary's jurisdiction as the Secretary shall choose, under such terms and conditions as the Secretary may prescribe.

(f)(1) The Secretary is authorized to convey to any State, or political subdivision thereof, in which any national cemetery is located, all right, title, and interest of the United States in and to any Government owned or controlled approach road to such cemetery if, prior to the delivery of any instrument of conveyance, the State or political subdivision to which such conveyance is to be made notifies the Secretary in writing of its willingness to accept and maintain

the road included in such conveyance. Upon the execution and delivery of such a conveyance, the jurisdiction of the United States over the road conveyed shall cease and thereafter vest in the State or political subdivision concerned.

(2) The Secretary may, to the extent of appropriated funds available for such purpose, make a contribution to local authorities for the construction of road improvements or traffic controls or other devices on land adjacent to a national cemetery if the Secretary determines that such a contribution is essential to ensure safe ingress to or egress from the cemetery.

(g) Notwithstanding any other provision of law, the Secretary may at such time as the Secretary deems desirable, relinquish to the State in which any cemetery, monument, or memorial under the Secretary's jurisdiction is located, such portion of legislative jurisdiction over the lands involved as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of jurisdiction under the authority of this subsection may be made by filing with the Governor of the State involved a notice of such relinquishment and shall take effect upon acceptance thereof by the State in such manner as its laws may prescribe.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 76, §1004; amended Pub. L. 99-576, title IV, §411, title VII, §701(55), Oct. 28, 1986, 100 Stat. 3283, 3295; Pub. L. 100-322, title III, §§341(a), 342, May 20, 1988, 102 Stat. 539, 540; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102-54, §14(b)(21), June 13, 1991, 105 Stat. 284; renumbered §2404 and amended Pub. L. 102-83, §§4(a)(3), (4), (b)(7), 5(a), Aug. 6, 1991, 105 Stat. 404-406.)

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 1004 of this title as this section.

Subsec. (c)(2)(A). Pub. L. 102-83, §4(b)(7), substituted "Administrator of Veterans' Affairs" for "Secretary".

Subsec. (c)(2)(B). Pub. L. 102-54 substituted "October 28, 1986" for "the date of the enactment of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986".

Subsec. (c)(2)(C). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (d). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

1989—Pub. L. 101-237 substituted "Secretary" and "Secretary's" for "Administrator" and "Administrator's", respectively, wherever appearing.

1988—Subsec. (c)(2)(C), (D). Pub. L. 100-322, §341(a), added subpars. (C) and (D).

Subsec. (f). Pub. L. 100-322, §342, designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (b). Pub. L. 99-576, §701(55)(B), substituted "the Administrator" for "he" before "is responsible".

Subsec. (c). Pub. L. 99-576, §411, designated existing provisions as par. (1), substituted "Subject to paragraph (2), each" for "Each", and added par. (2).

Subsec. (d). Pub. L. 99-576, §701(55)(A), substituted "the veteran" for "he".

Subsecs. (e), (g). Pub. L. 99-576, §701(55)(B), (C), substituted "the Administrator" and "the Administrator's" for "he" and "his", respectively, wherever appearing.

TRANSFER OF FUNCTIONS

Section 6 of Pub. L. 93-43 provided that:

“[*Jurisdiction*] (a)(1) There are hereby transferred from the Secretary of the Army to the Administrator of Veterans' Affairs all jurisdiction over, and responsibility for, (A) all national cemeteries (except the cemetery at the United States Soldiers' and Airmen's Home and Arlington National Cemetery), and (B) any other cemetery (including burial plots), memorial, or monument under the jurisdiction of the Secretary of the Army immediately preceding the effective date of this section [see note hereunder] (except the cemetery located at the United States Military Academy at West Point) which the President determines would be appropriate in carrying out the purposes of this Act [see Tables for classification].

“(2) There are hereby transferred from the Secretary of the Navy and the Secretary of the Air Force to the Administrator of Veterans' Affairs all jurisdiction over, and responsibility for, any cemetery (including burial plots), memorial, or monument under the jurisdiction of either Secretary immediately preceding the effective date of this section [see note hereunder] (except those cemeteries located at the United States Naval Academy at Annapolis, the United States Naval Home Cemetery at Philadelphia, and the United States Air Force Academy at Colorado Springs) which the President determines would be appropriate in carrying out the purposes of this Act [see Tables for classification].

“[*Personnel; property; records; and funds*] (b) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available to, or under the jurisdiction of, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, in connection with functions transferred by this Act, as determined by the Director of the Office of Management and Budget, are transferred to the Administrator of Veterans' Affairs.

“[*Savings provision; offenses, penalties and forfeitures*] (c) All offenses committed and all penalties or forfeitures incurred under any of the provisions of law amended or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if such amendments or repeals had not been made.

“[*Same; rules; regulations, permits, and other privileges*] (d) All rules, regulations, orders, permits, and other privileges issued or granted by the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force with respect to the cemeteries, memorials, and monuments transferred to the Veterans' Administration by this Act, unless contrary to the provisions of such Act, shall remain in full force and effect until modified, suspended, overruled, or otherwise changed by the Administrator of Veterans' Affairs, by any court of competent jurisdiction, or by operation of law.

“[*Abatement of proceedings; proceedings against United States or officer of Veterans' Administration; judicial orders; continuation of suits by Administrator*] (e) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an official of the Department of the Army, the Department of the Navy, or the Department of the Air Force with respect to functions transferred under subsection (a) or (c) of this section shall abate by reason of the enactment of this section. No cause of action by or against any such department with respect to functions transferred under such subsection (a) or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this section. Causes of actions, suits, or other proceedings may be asserted by or against the United States or such officer of the Veterans' Administration as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, upon its own motion or that of any party, enter an order which will give effect to the provisions of this subsection. If before the date this section takes effect [see note hereunder], any such department, or officer thereof in his official capacity, is a party to a suit with respect to any function so transferred, such suit shall be continued by the Administrator of Veterans' Affairs.”

[Section 6 of Pub. L. 93-43 effective Sept. 1, 1973, or such earlier date as the President may prescribe and publish in the Federal Register, see section 10(c) of Pub. L. 93-43, set out as an Effective Date note under section 2306 of this title.]

[The United States Soldiers' and Airmen's Home and the United States Naval Home were incorporated into the Armed Forces Retirement Home by section 411 of Title 24, Hospitals and Asylums.]

GRAVE MARKERS IN CERTAIN LOCATIONS

Pub. L. 103-446, title VIII, §804, Nov. 2, 1994, 108 Stat. 4675, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary of Veterans Affairs may provide for flat grave markers at the Willamette National Cemetery, Oregon.”

Section 11 of Pub. L. 102-54, as amended by Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary may provide for flat grave markers in that section of the Florida National Cemetery in which preplaced grave liners were installed before July 30, 1988.”

Section 341(b) of Pub. L. 100-322, as amended by Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Administrator may provide for flat grave markers in the cases of the national cemeteries in Riverside, California; Bourne, Massachusetts; Augusta, Michigan; and Indiantown Gap, Pennsylvania; and the proposed national cemetery approved by the Administrator, as of July 31, 1987, for Northern California.”

FUNCTIONS, POWERS, AND DUTIES OF SECRETARIES UNAFFECTED

Repeal of sections 271 to 276, 278 to 279d, 281 to 282, 286 to 290, and 296 of Title 24, Hospitals and Asylums, and enactment of provisions set out as notes under sections 271 to 276 of Title 24 without effect upon functions, powers, and duties of secretaries of the military departments with respect to cemeteries, memorials, or monuments under the jurisdiction of the secretary concerned to which the transfer provisions of section 6(a) of Pub. L. 93-43, set out as a note above, do not apply, see section 7(b) of Pub. L. 93-43, set out as a note under sections 271 to 276 of Title 24.

STUDIES; RECOMMENDATIONS TO CONGRESS

Section 3 of Pub. L. 93-43 authorized the Administrator to conduct a comprehensive study concerning the criteria governing the development and operation of the National Cemetery System, including the concept of regional cemeteries, the relationship of the National Cemetery System to other burial benefits provided by Federal and State Governments to servicemen and veterans, steps taken to conform the existing system to the recommended criteria, private burial and funeral costs in the United States, current headstone and marker programs, and the marketing and sales practices of non-Federal cemeteries and interment facilities, and to submit his recommendations within twelve months after the convening of the first session of the Ninety-third Congress and also authorized the Administrator, in conjunction with the Secretary of Defense, to conduct a comprehensive study concerning the advisability of including Arlington National Cemetery within the National Cemetery System, the appropriateness of maintaining the present eligibility requirements for burial at Arlington National Cemetery and the advisability of establishing another national cemetery, and to submit the results of their joint recommendations within twelve months after the convening of the first session of the Ninety-third Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2408 of this title.

§ 2405. Disposition of inactive cemeteries

(a) The Secretary may transfer, with the consent of the agency concerned, any inactive cemetery, burial plot, memorial, or monument within the Secretary's control to the Department of the Interior for maintenance as a national monument or park, or to any other agency of the Government. Any cemetery transferred to the Department of the Interior shall be administered by the Secretary of the Interior as a part of the National Park System, and funds appropriated to the Secretary of the Interior for such system shall be available for the management and operation of such cemetery.

(b) The Secretary may also transfer and convey all right, title, and interest of the United States in or to any inactive cemetery or burial plot, or portion thereon, to any State, county, municipality, or proper agency thereof, in which or in the vicinity of which such cemetery or burial plot is located, but in the event the grantee shall cease or fail to care for and maintain the cemetery or burial plot or the graves and monuments contained therein in a manner satisfactory to the Secretary, all such right, title, and interest transferred or conveyed by the United States, shall revert to the United States.

(c) If a cemetery not within the National Cemetery System has been or is to be discontinued, the Secretary may provide for the removal of remains from that cemetery to any cemetery within such System. The Secretary may also provide for the removal of the remains of any veteran from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 77, §1005; amended Pub. L. 99-576, title VII, §701(56), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, §313(b)(1), (4), Dec. 18, 1989, 103 Stat. 2077; renumbered §2405, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1005 of this title as this section.

1989—Subsec. (a). Pub. L. 101-237, §313(b)(4), inserted “of the Interior” after “funds appropriated to the Secretary”.

Pub. L. 101-237, §313(b)(1), substituted “Secretary may transfer” for “Administrator may transfer” and “Secretary’s” for “Administrator’s”.

Subsecs. (b), (c). Pub. L. 101-237, §313(b)(1), substituted “Secretary” for “Administrator” wherever appearing.

1986—Subsec. (a). Pub. L. 99-576, §701(56)(A), substituted “the Administrator’s” for “his”.

Subsec. (c). Pub. L. 99-576, §701(56)(B), substituted “The Administrator” for “He”.

§ 2406. Acquisition of lands

As additional lands are needed for national cemeteries, they may be acquired by the Secretary by purchase, gift (including donations from States or political subdivisions thereof), condemnation, transfer from other Federal agencies, or otherwise, as the Secretary determines to be in the best interest of the United States.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 78, §1006; amended Pub. L. 99-576, title VII,

§701(57), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2406, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1006 of this title as this section.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing.

1986—Pub. L. 99-576 substituted “the Administrator” for “he”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 115 of this title.

§ 2407. Authority to accept and maintain suitable memorials

Subject to such restrictions as the Secretary may prescribe, the Secretary may accept gifts, devises, or bequests from legitimate societies and organizations or reputable individuals, made in any manner, which are made for the purpose of beautifying national cemeteries, or are determined to be beneficial to such cemetery. The Secretary may make land available for this purpose, and may furnish such care and maintenance as the Secretary deems necessary.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 78, §1007; amended Pub. L. 99-576, title VII, §701(58), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2407, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1007 of this title as this section.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing.

1986—Pub. L. 99-576 substituted “the Administrator” for “he” in two places and “The Administrator” for “He”.

§ 2408. Aid to States for establishment, expansion, and improvement of veterans' cemeteries

(a)(1) Subject to subsection (b) of this section, the Secretary may make grants to any State to assist such State in establishing, expanding, or improving veterans' cemeteries owned by such State. Any such grant may be made only upon submission of an application to the Secretary in such form and manner, and containing such information, as the Secretary may require.

(2) There is authorized to be appropriated \$5,000,000 for fiscal year 1980 and for each of the four succeeding fiscal years, and such sums as may be necessary for fiscal year 1985 and for each of the fourteen succeeding fiscal years, for the purpose of making grants under paragraph (1) of this subsection.

(b) Grants under this section shall be subject to the following conditions:

(1) The amount of any grant under this section may not exceed an amount equal to 50 percent of the total of the value of the land to be acquired or dedicated for the cemetery and the cost of the improvements to be made on such land, with the remaining amount to be contributed by the State receiving the grant.

(2) If at the time of a grant under this section the State receiving the grant dedicates for the purposes of the cemetery involved land already owned by the State, the value of such land may be considered in determining the amount of the State's contribution under paragraph (1) of this subsection, but the value of such land may not be used for more than an amount equal to 50 percent of the amount of such contribution and may not be used as part of such State's contribution for any subsequent grant under this section.

(3) If a State that has received a grant under this section to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as a veterans' cemetery, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from such State the total of all grants made under this section to such State in connection with such cemetery.

(c)(1) In addition to the conditions specified in subsection (b) of this section, any grant to a State under this section to assist such State in establishing a veterans' cemetery shall be made on the condition that such cemetery shall conform to such standards and guidelines relating to site selection, planning, and construction as the Secretary may by regulation prescribe. In prescribing regulations for the purposes of the preceding sentence, the Secretary shall take into account the standards and guidelines for site selection, planning, and construction that are applicable to cemeteries in the National Cemetery System, including those provided in subsections (b), (c), and (d) of section 2404 of this title.

(2) The Secretary may by regulation prescribe such additional terms and conditions for grants under this section as the Secretary considers appropriate.

(d)(1) In addition to the conditions specified in subsections (b) and (c), any grant made on or after the date of the enactment of this subsection to a State under this section to assist such State in establishing, expanding, or improving a veterans' cemetery shall be made on the condition described in paragraph (2).

(2) For purposes of paragraph (1), the condition described in this paragraph is that, after the date of the receipt of the grant, such State prohibit the interment or memorialization in that cemetery of a person described in section 2411(b) of this title, subject to the receipt of notice described in subsection (a)(2) of such section, except that for purposes of this subsection—

(A) such notice shall be furnished to an appropriate official of such State; and

(B) a finding described in subsection (b)(3) of such section shall be made by an appropriate official of such State.

(e) Sums appropriated under subsection (a) of this section shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated. If all funds from a grant under this section have not been utilized by a State for the purpose for which the grant was made within three years

after such grant is made, the United States shall be entitled to recover any such unused grant funds from such State.

(Added Pub. L. 95-476, title II, § 202(b)(1), Oct. 18, 1978, 92 Stat. 1504, § 1008; amended Pub. L. 98-223, title II, § 202, Mar. 2, 1984, 98 Stat. 41; Pub. L. 100-322, title III, § 343, May 20, 1988, 102 Stat. 540; Pub. L. 100-687, div. B, title XVI, § 1601, Nov. 18, 1988, 102 Stat. 4137; Pub. L. 101-237, title III, § 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered § 2408 and amended Pub. L. 102-83, § 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title VIII, § 803, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 105-116, § 2, Nov. 21, 1997, 111 Stat. 2382.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 105-116, which was approved Nov. 21, 1997.

AMENDMENTS

1997—Subsecs. (d), (e). Pub. L. 105-116 added subsec. (d) and redesignated former subsec. (d) as (e).

1994—Subsec. (a)(2). Pub. L. 103-446 substituted "fourteen" for "nine".

1991—Pub. L. 102-83, § 5(a), renumbered section 1008 of this title as this section.

Subsec. (c)(1). Pub. L. 102-83, § 5(c)(1), substituted "2404" for "1004".

1989—Subsecs. (a)(1), (c). Pub. L. 101-237 substituted "Secretary" for "Administrator" wherever appearing.

1988—Subsec. (a)(2). Pub. L. 100-687 substituted "nine" for second reference to "four".

Subsec. (b)(1). Pub. L. 100-322, § 343(1)-(3), redesignated par. (2) as (1), substituted "percent" for "per centum", and struck out former par. (1) which read as follows: "No State may receive grants under this section in any fiscal year in a total amount in excess of 20 per centum of the total amount appropriated for such grants for such fiscal year."

Subsec. (b)(2). Pub. L. 100-322, § 343(2)-(4), redesignated par. (3) as (2) and substituted "percent" for "per centum" and "paragraph (1)" for "paragraph (2)". Former par. (2) redesignated (1).

Subsec. (b)(3), (4). Pub. L. 100-322, § 343(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

1984—Subsec. (a)(2). Pub. L. 98-223 inserted ", and such sums as may be necessary for fiscal year 1985 and for each of the four succeeding fiscal years," after "fiscal years".

EFFECTIVE DATE

Section effective Oct. 18, 1978, see section 205(a) of Pub. L. 95-476, set out as an Effective Date of 1978 Amendment note under section 2303 of this title.

§ 2409. Memorial areas in Arlington National Cemetery

(a) The Secretary of the Army may set aside, when available, a suitable area or areas in Arlington National Cemetery, Virginia, to honor the memory of members of the Armed Forces and veterans—

(1) who are missing in action;

(2) whose remains have not been recovered or identified;

(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) whose remains were donated to science; or

(5) whose remains were cremated and whose ashes were scattered without interment of any portion of the ashes.

(b) Under regulations prescribed by the Secretary of the Army, appropriate memorials or markers may be erected in Arlington National Cemetery to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section.

(Added Pub. L. 99-576, title IV, §413(a), Oct. 28, 1986, 100 Stat. 3284, §1009; amended Pub. L. 101-237, title III, §313(b)(5), Dec. 18, 1989, 103 Stat. 2077; renumbered §2409, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1009 of this title as this section.

1989—Subsec. (b). Pub. L. 101-237 inserted “of the Army” after “Secretary”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2411 of this title.

§ 2410. Burial of cremated remains in Arlington National Cemetery

(a) The Secretary of the Army shall designate an area of appropriate size within Arlington National Cemetery for the unmarked interment, in accordance with such regulations as the Secretary may prescribe, of the ashes of persons eligible for interment in Arlington National Cemetery whose remains were cremated. Such area shall be an area not suitable for the burial of casketed remains.

(b) The Secretary of each military department shall make available appropriate forms on which those members of the Armed Forces who so desire may indicate their desire to be buried within the area to be designated under subsection (a).

(Added Pub. L. 101-237, title V, §502(a), Dec. 18, 1989, 103 Stat. 2093, §1010; amended Pub. L. 102-54, §14(b)(22), June 13, 1991, 105 Stat. 284; renumbered §2410, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1010 of this title as this section.

Subsec. (b). Pub. L. 102-54 substituted “each military department” for “the military departments”.

§ 2411. Prohibition against interment or memorialization in the National Cemetery System or Arlington National Cemetery of persons committing Federal or State capital crimes

(a)(1) In the case of a person described in subsection (b), the appropriate Federal official may not—

(A) inter the remains of such person in a cemetery in the National Cemetery System or in Arlington National Cemetery; or

(B) honor the memory of such person in a memorial area in a cemetery in the National Cemetery System (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).

(2) The prohibition under paragraph (1) shall not apply unless written notice of a conviction or finding under subsection (b) is received by the appropriate Federal official before such official

approves an application for the interment or memorialization of such person. Such written notice shall be furnished to such official by the Attorney General, in the case of a Federal capital crime, or by an appropriate State official, in the case of a State capital crime.

(b) A person referred to in subsection (a) is any of the following:

(1) A person who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment.

(2) A person who has been convicted of a State capital crime for which the person was sentenced to death or life imprisonment without parole.

(3) A person who—

(A) is found (as provided in subsection (c)) to have committed a Federal capital crime or a State capital crime, but

(B) has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution.

(c) A finding under subsection (b)(3) shall be made by the appropriate Federal official. Any such finding may only be made based upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the appropriate Federal official.

(d) For purposes of this section:

(1) The term “Federal capital crime” means an offense under Federal law for which the death penalty or life imprisonment may be imposed.

(2) The term “State capital crime” means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which the death penalty or life imprisonment without parole may be imposed.

(3) The term “appropriate Federal official” means—

(A) the Secretary, in the case of the National Cemetery System; and

(B) the Secretary of the Army, in the case of Arlington National Cemetery.

(Added Pub. L. 105-116, §1(a), Nov. 21, 1997, 111 Stat. 2381.)

EFFECTIVE DATE

Section 1(c) of Pub. L. 105-116 provided that: “Section 2411 of title 38, United States Code, as added by subsection (a), shall apply with respect to applications for interment or memorialization made on or after the date of the enactment of this Act [Nov. 21, 1997].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2408 of this title.

PART III—READJUSTMENT AND RELATED BENEFITS

Chap.		Sec.
30.	All-Volunteer Force Educational Assistance Program	3001
31.	Training and Rehabilitation for Veterans with Service-Connected Disabilities	3100
32.	Post-Vietnam Era Veterans' Educational Assistance	3201
34.	Veterans' Educational Assistance	3451
35.	Survivors' and Dependents' Educational Assistance	3500